APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1628-59

FRANKLIN EDWARD KAMENY, *Plaintiff*

v.

HONORABLE WILBER M. BRUCKER, Secretary of the Army, et al., *Defendants*

Order

Upon consideration of defendants' Motion for Summary Judgment and plaintiff's opposition thereto, and the Court having considered the pleadings, affidavit, and exhibits, and after argument by the parties in open Court, and the Court having determined that there is no genuine issue of material fact and defendants are entitled to judgment herein as a matter of law, it is this 28th day of December, 1959,

ORDERED that defendants' Motion for Summary Judgment be and the same is granted and the complaint dismissed.

s/ MATTHEWS
Judge

Opinion

Decided June 23, 1960

Mr. Byron N. Scott for appellant.

Mr. Daniel J. McTague, Assistant United States Attorney, for appellee. *Messrs. Oliver Gasch,* United States Attorney, *Carl W. Belcher* and *Miss Doris H. Spangenburg,* Assistant United States Attorneys, were on the brief for appellee.

Before WILBUR K. MILLER, DANAHER and BASTIAN, *Circuit Judges.*

PER CURIAM: Appellant sought a mandatory injunction commanding his reinstatement to a position as astronomer

in the Army Map Service. The appellees moved for, and the District Court granted, summary judgment, and the complaint was dismissed. This appeal followed.

Before the District Court were certified copies of the records of the Department of the Army and of the Civil Service Commission. The appellant, as of July 15, 1957, having received a temporary appointment such as is authorized by 5 C.F.R. § 2.302 (Supp. 1960), came within 5 C.F.R. § 2.107(a) (Supp. 1960), which provides for appointments "subject to investigation . . . to establish the appointee's qualifications and suitability for employment in the competitive service." Less than six months later, as of December 10, 1957, appellant was advised that the appointing authority proposed to effectuate appellant's removal on December 20, 1957. In addition, specific details were supplied from which the appellant was put on notice as to the basis for the contemplated separation from service. He was advised of his right to answer the notice of the proposed adverse action "personally, and in writing, and to submit any and all evidence you may desire." Under date of December 11, 1957, appellant filed a sworn answer, after which, by letter dated December 20, 1957, he was further notified that careful consideration had been given to the charges and to appellant's reply, notwithstanding which his removal was to be effectuated as of December 20, 1957. He was advised of a right to appeal "through the grievance procedure outlined in Civilian Personnel Regulations E-2." Appellant contends that he was not given a "hearing" under that section, but none is required, as it is provided only that a hearing "may be held at the commanding officer's discretion." Even so, appellant presented an oral statement before the Commanding Officer and the Civilian Personnel Officer of the Army Map Service, and was thereupon given an opportunity further to present in writing, subject to review, such additional explanation as appellant might chose to submit.

Appellant accordingly submitted a lengthy memorandum setting forth his position in its best light; he filed three character affidavits and a statement from his psychiatrist. Some weeks later appellant was informed that after careful review of all the proceedings and the evidence available, the December 20, 1957 notice of separation "was considered justifiable to better promote the efficiency of the Federal service and no action will be taken to reinstate you to your former position."

5 C.F.R. § 9.104 (Supp. 1960) provides that "An employee serving under a temporary appointment may be separated at any time upon notice in writing from the appointing officer."

We are satisfied that the latter accorded to the appellant all procedural prerogatives required to be extended in the case of temporary appointees, and that valid regulations of the Civil Service Commission authorized appellant's separation from the service. *Hargett* v. *Summerfield*, 100 U.S.App.D.C. 85, 243 F.2d 29, *cert. denied*, 353 U.S. 970 (1957); cf. *Kohlberg* v. *Gray*, 93 U.S.App. D.C. 97, 207 F.2d 35 (1953), *cert. denied*, 346 U.S. 937 (1954); *Jason* v. *Summerfield*, 94 U.S.App.D.C. 197, 201, 214 F.2d 273, 277, *cert. denied*, 348 U.S. 840 (1954).

Our decision on this aspect of the case makes it unnecessary for us to consider appellant's contentions with reference to the conclusions reached by the Civil Service Commission.

The order of the District Court is

Affirmed.

Order

Upon consideration of appellant's petition for leave to file a petition for rehearing, time havin expired, and it appearing that appellant's petition for rehearing has been lodged with the Clerk and that appellees have no objection to the filing of the petition for rehearing, it is

ORDERED by the court that the Clerk is directed to file appellant's petition for rehearing.

It is FURTHER ORDERED by the court that appellant's petition for rehearing is denied.

Per Curiam.

Dated: August 31, 1960